

REMARKS

Examiner has rejected Claims 1-3, 6-14, and 16-20 under 35 U.S.C. § 102(b) as being anticipated by *Herrmann* (5,437,381). In response thereto, Applicant has amended Claims 1, 3, 10, 11 and 13, and respectfully traverses Examiner's rejection.

Herrman ('381) does teach a dual-compartment bottle, however, Applicant respectfully asserts that *Herrman* ('381) does not utilize, anticipate, teach or render obvious a dual-compartment container wherein the contents of either or both compartments are selectively accessible to the user irrespective of the status of the contents of the other compartment. That is, the second compartment of *Herrman* ('381) is unlike Applicant's second compartment, wherein the second liquid in the second compartment of *Herrman* ('381) starts "to flow ONLY after said first compartment has been substantially emptied of said first liquid." See Col. 1, lines 66-68 to Col. 2, lines 1-2 (emphasis added). The purpose of the *Herrman* ('381) device requires such a limitation, because the second liquid is intended to be "a sugar-free liquid such as water, which, when reaching the infant's oral cavity, cleanses the latter of the remnants of the sugar-containing nutrient" in the first liquid. Thus, there is no provision or description of any possibility of dispensing the second liquid in the second compartment preferentially before, or coincident with, the first liquid in the first compartment, as is available in Applicant's device. Moreover, to modify *Herrman* ('381) in such a

manner would completely defeat its intended purpose.

Applicant has amended Independent Claims 1 and 11, respectively, to clarify and more succinctly define that the dispensability of the contents of either fillable member is independent of the status of the contents of the other fillable member, and that the liquids in each fillable member are selectively accessible. Because "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. V. Union Oil co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), and because *Herrman* (381) does not describe each and every element of Applicant's device, Applicant believes that Applicant's Independent Claims 1 and 11, as amended, are distinguished over *Herrman* ('381).

Examiner has also rejected Claims 1-20 under 35 U.S.C. § 102(b) as being anticipated by *Levy et al.* (5,803,268). In response thereto, Applicant has amended Claims 1, 3, 10, 11 and 13, and respectfully traverses Examiner's rejection.

Like *Hermann* ('381), *Levy et al.* ('268) does teach a dual-compartment bottle, however, the *Levy et al.* ('268) device is structurally distinct from that claimed by Applicant and is incapable of functioning in the same manner. Specifically, the compartments of *Levy et al.* ('268) are NOT defined or accessible from the same end of the bottle, as are the compartments of Applicant's device, but

instead the *Levy et al.* ('268) device is self-titled and further described as "double-ended." That is, the bottle of *Levy et al.* ('268) has "two interior spaces," each with "its own closure/dispenser, ONE AT EACH END..." See Abstract, lines 2-3. This is unlike Applicant's device in both structure and function.

Applicant's compartments ARE accessible from the same end of the container. Thus, Applicant respectfully asserts that because the identical invention is not shown, "The identical invention must be shown in as complete detail as is contained in the...claim," *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989), *Levy et al.* ('268) does not anticipate Applicant's device.

Applicant has amended Independent Claims 1 and 11, respectively, to clarify and more succinctly define that Applicant's container has a "first dispensing end and a second base end" wherein the compartment fill apertures are "defined proximate the first dispensing end," and that the liquid held within the first and second fillable members is "accessible via a first end" of the container. Because "[t]he elements must be arranged as required by the claim," *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990), and because *Levy et al.* ('268) does not arrange the elements as required in Applicant's claims, Applicant believes that Applicant's Independent Claims 1 and 11, as amended, are distinguished over *Levy et al.* ('268).

Lastly, Examiner has rejected Claims 4, 5, and 15 under 35

U.S.C. § 103(a) as being unpatentable over *Herrmann* ('381) in view of *Maines* (5,921,440). In response, as discussed hereinabove, Applicant has amended independent Claims 1 and 11 and respectfully traverses Examiners rejection.

As discussed above, *Herrman* ('381) does not teach or suggest a dual-compartment container having equally selectable compartments, wherein one compartment defines a three-dimensional configuration within the other. Further, *Maines* ('440) also fails to teach or suggest any such embodiment or feature. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art," *In re Royka*, 490 F.2d 981 (CCPA 1974), thus, Applicant respectfully asserts that the amended Independent Claims 1 and 11 are not obvious. Further, because "[i]f an independent claim is nonobvious under 35 USC 103, then any claim depending therefrom is nonobvious," *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1985), remaining dependent Claims 2-10 and 12-20 are also not obvious.

Even if *Herrman* ('381) and *Maines* ('440) are combined, one does not arrive at Applicant's invention. Moreover, modifying *Herrman* ('381), as suggested by Examiner, would change the principle of operation thereof. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re*

Ratti, 270 F.2d 810 (CCPA 1959).

Applicant believes that the foregoing amendments and arguments distinguish the claims over the prior art and establish that Applicant's claimed invention is novel and non-obvious, thereby placing the rejected independent claims 1 and 11 and all remaining depending claims in condition for allowance.

CONCLUSION

The above amendments are corrections to form and thus, no new matter was added. In light of the above amendments and arguments, Applicant respectfully believes that Claims 1-20 are now allowable. Should there be any questions or concerns, the Examiner is invited to telephone Applicant's undersigned attorney.

Respectfully submitted, this 29th day of August, 2006.



Sandra M. Drummond
Reg. No. 45,781

Myers & Kaplan,
Intellectual Property Law, L.L.C.
1899 Powers Ferry Road
Suite 310
Atlanta, GA
(770) 541-7444
(770) 541-7448 facsimile
sdrummond@mkiplaw.com -- Email
Attorney Docket Number: 22160-RA